MALAKOFF BHD

v.

PEMUNGUT HASIL TANAH SEBERANG PERAI UTARA, BUTTERWORTH

FEDERAL COURT, PUTRAJAYA
HAIDAR MOHD NOOR CJ (MALAYA)
STEVE SHIM CJ (SABAH & SARAWAK)
ARIFIN ZAKARIA JCA
[CIVIL APPEAL NO: 01-2-2003 (P)]
22 OCTOBER 2004

LAND LAW: *Acquisition of land - Compensation - Assessment by learned judge - Whether sufficient weight given to comparables put forth by parties*

The District Land Administrator awarded the sum of RM9,108,890 (RM28,327 per acre) for 137.41163 hectares of land ('scheduled land') for acquisition purposes. The appellant, dissatisfied with the said award, appealed to the High Court. The learned judge increased the award to RM35,000 per acre. The appellant, still dissatisfied with the award, now appealed to this court. The main issue was whether the learned judge failed to give sufficient weight to the comparables relied upon by the appellant's valuer.

Held (dismissing the appeal)
Per Arifin Zakaria JCA delivering the judgment of the court:

[1] In determining market value, the courts as a matter of course have adopted the comparable method of valuation of land where there is ample evidence of sales or awards involving similar lands. In the present case, the appellant's valuer relied on eight comparables of sales to support their valuation that the market value of the scheduled land was approximately RM50,000 per acre. The respondent relied on the government valuer who valued the scheduled land at RM28,000 per acre based on four comparables. The learned judge considered all the comparables put forth by the parties and came to the conclusion that only two comparables were suited for the purpose of determining the market value of the scheduled land. Based on the said two comparables he found the fair market value for the scheduled land to be RM35,000 per acre after making necessary adjustments for size and location. The adjustments in the circumstances were reasonable taking into account the difference in size of the two comparables compared to that of the scheduled land and also the location

of the scheduled land. Therefore it followed that the learned judge acted on correct principles and that the appellant failed to discharge the burden to satisfy the court that the learned judge's assessment was wrong. (pp 368 e, 369 c, 370 a, d-e, 372 e-f & 373 f)

*[**Bahasa Malaysia** Translation Of Headnotes*

Pentadbir Tanah Daerah telah menetapkan jumlah RM9,108,890 (RM28,327 se ekar) sebagai pampasan bagi tujuan pengambilan untuk sebidang tanah seluas 137.41163 hektar ('tanah berjadual'). Perayu yang tidak berpuashati dengan jumlah tersebut telah merayu ke Mahkamah Tinggi. Yang arif hakim telah menaikkan pampasan kepada RM35,000 se ekar. Perayu yang masih tidak berpuashati merayu ke mahkamah semasa. Isu utama adalah sama ada yang arif hakim gagal memberi pertimbangan yang mencukupi kepada perbandingan-perbandingan yang dikemukakan oleh perayu.

Diputuskan (menolak rayuan)
Oleh Arifin Zakaria HMR menyampaikan penghakiman mahkamah:

[1] Dalam menentukan harga pasaran, mahkamah tidak dapat tidak akan memakai cara menilai perbandingan di mana terdapat bukti jelas tentang penjualan-penjualan ataupun keputusan yang membabitkan tanah-tanah yang serupa. Dalam kes semasa, pentaksir perayu bergantung kepada lapan perbandingan penjualan bagi menyokong taksirannya bahawa nilai pasaran tanah berjadual adalah dalam lengkongan RM50,000 se ekar. Responden bergantung kepada pentaksir kerajaan yang mentaksir tanah berjadual pada kadar RM28,000 se ekar berdasarkan kepada empat perbandingan. Yang arif hakim menimbang kesemua perbandingan yang dikemukakan oleh pihak-pihak dan memutuskan bahawa hanya dua perbandingan sesuai bagi maksud penentuan harga pasaran tanah berjadual. Dan berdasarkan kepada dua perbandingan tersebut, beliau mendapati harga pasaran tanah berjadual adalah RM35,000 se ekar selepas mengambil kira kesesuaian lokasi dan keluasan tanah. Penyesuaian-penyesuaian yang dibuat, dalam keadaan yang wujud, adalah munasabah, mengambil kira perbezaan keluasan kedua-dua perbandingan dengan tanah berjadual dan lokasi tanah berjadual. Ianya dengan itu mengikut bahawa yang arif hakim bertindak atas prinsip yang betul dan perayu gagal memenuhi tanggungjawab memuaskan mahkamah bahawa penilaian yang arif hakim itu adalah salah.

Case(s) referred to:

Bertam Consolidated Rubber Co Ltd v. Collector of Land Revenue Province Wellesley [1984] 1 CLJ 69; [1984] 1 CLJ (Rep) 78 FC ***(refd)***

Collector of Land Revenue v. Alagappa Chettiar; Collector of Land Revenue v. Ong Thye Eng [1875-1990] 2 PCC 665 ***(refd)***

Nanyang Manufacturing Co v. Collector of Land Revenue, Johor [1954] 20 MLLJ 69 ***(refd)***

Ng Tiou Hong v. Collector of Land Revenue, Gombak [1984] 2 MLJ 35 ***(refd)***

Siah Brothers Plantation Sdn Bhd v. Pentadbir Tanah dan Daerah Kuantan [1993] 3 CLJ 435 SC ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 38(1), 49

Other source(s) referred to:

Aggarwala's Compulsory Acquisiton of Land in India, 7th edn, p 553

For the appellant - Wong Chong Wah (Lim Koon Huan); M/s Skrine
For the respondent - Hamdan Hamzah

[Appeal from High Court, Pulau Pinang; No: 15-29-1993]

Reported by Usha Thiagarajah

JUDGMENT

Arifin Zakaria JCA:

The background facts, which are not in dispute, are briefly as follows. The declaration of intended acquisition of the scheduled land was published in the Government Gazette of the State of Pulau Pinang dated 24 September 1992. The declared purpose of the acquisition is "Tujuan Awam". The land is held under Lot No. 2020, M.K.6, Daerah Seberang Perai Utara, comprising an area of 137.41163 hectares ("the scheduled land"). The area to be acquired is 130.122 hectares. The scheduled land is an agricultural holding under oil palm cultivation located in Pongsu Seribu which is essentially an agricultural area, with a variety of holdings ranging from large estates to small holding. The main cultivation being oil palm and rubber. Other forms of development in or near the vicinity of the scheduled land include housing schemes, Sekolah Menengah Kebangsaan Ugama Al-Irshad, and Jabatan Perkhidmatan Haiwan. In terms of location, it is about 4.8 km in distance from both Kepala Batas and Tasek Gelugor and 18.5 km from Butterworth town. The scheduled land is a second layer land fronting an unsurfaced road, which joins Jalan Pongsu Seribu. Basic amenities like water supply, electric supply and public transport are available in the vicinity of the scheduled land.

After an enquiry the District Land Administrator awarded the sum of RM9,108,890 (equivalent to RM28,327 per acre) as compensation for the scheduled land. This is contained in Form G dated 16 November 1992 at p. 19 of the Appeal Record. The appellant was dissatisfied with the said award and filed its objection under s. 38(1) of the Land Acquisition Act 1960 ("the Act"). The objection came for hearing before Mokhtar JCA, sitting as a High Court Judge in Penang. The learned judge increased the award to RM35,000 per acre, an increase of RM6,673 per acre from the award of the District Land Administrator. The appellant is still dissatisfied with the said award of the learned judge and hence this appeal.

Before us, it is contended that the compensation should have been increased to at least RM48,000 per acre based on appellant's valuer's comparable No. 8, which is the award made by District Land Administrator for the same land on 13 February 1992, some seven months prior to the present acquisition. It is further contended that the learned judge in making the award failed to give sufficient weight to the comparables relied upon by the appellant's valuer. For those reasons the appellant maintained that the award by the learned judge of RM35,000 is erroneous as the compensation sum is well below the true market value of the scheduled land.

In determining market value, our courts as a matter of course have adopted the comparable method of valuation of land where there is ample evidence of sales or awards involving similar lands. What this method entails was succinctly explained by the Federal Court in *Ng Tiou Hons v. Collector of Land Revenue, Gombak* [1984] 2 MLJ 35 where at pp. 37-38 in the following words:

> First, market value means the compensation that must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of unwillingness or sentimental value on the part of the vendor to part with the land and the urgent necessity of the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. It must be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compulsion. Secondly, the market price can be measured by a consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions. Thirdly, its potentialities must be taken into account. The nature of the land and the use to which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future eg, the possibility of it being used for building or other developments. Fourthly, in considering the nature of the land regard must be given as to whether its locality is within or near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve

indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in leveling the surface and the like. Fifthly, estimates of value by experts are undoubtedly some evidence but too much weight should not be given unless it is supported by, or coincides with, other evidence. *(Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co. Ltd., Vyricherla Narayana Gajapatiraju v. the Revenue Divisional Officer, Vizagapatam, and Nanyang Manufacturing Co. v. Collector of Land Revenue, Johor).*

The safest guide is evidence of sales of similar land of similar quality or position in the locality at or prior to the time of the acquisition. The prices paid for such sales can be used as comparables subject to making allowances for all the circumstance.

In the present case the valuer for the appellant Azmi & Co. Sdn. Bhd. assessed the market value of the scheduled land to be approximately RM50,000 per acre. They relied on 8 comparable of sales in support of their valuation, namely:

1. Lot No: 3130 (Mukim 8)
   Area: 101,818 Acres
   Date: 29.10.1982
   Analysis: RM35,000.00 per acre.

2. Lot No: 698 (Mukim 12)
   Area: 1.012 Acres
   Date: 21.8.1991
   Analysis: RM32,600.00 per acre

3. Lot No: 659 (Mukim 6)
   Area: 2.119 Acres
   Date: 30.06.1990
   Analysis: RM47,192.00 per acre.

4. Lot No: 1131, 2081, 2462, 2556, 3769 & etc
   Area: 2,000 Acres (Approx.)
   Date: 20.12.1991 (Agreement)
   Analysis: RM25,012. per acre

5. Lot No: 3252 (Mukim 12)
   Area Acquired: 12 Acres
   GN/Date: November 1984
   Collector's Award: RM40,000.00 per acre.

6. Lot No: 2019 (Mukim 8)
   Area Acquired: 25 Acres
   GN/Date: 36/31/01/1985
   High Court's Award: RM40,000.00 per acre
   Land Ref. No. 15-11-86

7. Lot No: 3139 (Mukim 12)
   Area Acquired: 16 Acres
   GN/Date: 300/07/11/1991
   Collector's Award: RM35,000.00 per acre

8. Lot No: 2020 (Mukim 6)
   Area Acquired: 18 Acres
   GN/Date: 42/13/02/1992
   Collector's Award: RM48,000.00 per acre

The respondent relied on the valuation report prepared by Jabatan Penilaian dan Perkhidmatan Harta, Kementerian Kewangan, Malaysia. The government valuer valued the scheduled land at RM28,000 per acre which is equivalent to RM70,000 per hectare. She premised her assessment of value on four comparables namely:

1.	Lot No:	Sbbg. 2020 Mk.6.SPU	2.	Lot No:	3769G Mk.6.SPU
	Area:	18 Acres		Area:	2068.71 Acres
	Date:	05.09.1992 (PT. Case)		Date:	18.08.1992 (DS. Case) 02.03.1992
	Analysis:	RM48,000.00 per acre.		Analysis:	RM26,000 per acre.
	Title:	MG FIRST GRADE (SEBAHAGIAN LADANG BERTAM)		Title:	MG FIRST GRADE
3.	Lot No:	361G	4.	Lot No:	3436 & 3438
	Area:	459,32 Acres		Area:	78.1647 Acres
	Date:	06.08.1995		Date:	12.10.1992 (P)
	Analysis:	RM32,670 per acre.		Analysis:	RM43,560.00 per acre
	Title:	MG B & C		Title:	Gr. FIRST GRADE

The learned judge in his judgment had considered all the comparables put forth by the parties and having done that he came to the conclusion that only two comparables which are suited for the purposes of determining the market value of the schedule land: that is the appellant's comparable No. 4 (respondent's comparable No. 2) and the appellant's comparable No. 8 (respondent's comparable No. 1). For ease of reference we will refer to these two comparables as comparables No. 4 and No. 8. Relying on these two comparables he came to his finding that the fair market value for the scheduled land is RM35,000 per acre.

The learned counsel for the appellant contended that the learned judge erred in his finding by taking into consideration comparable No. 4 which was the sale of Bertam Estate with an area of approximately 2,000 acres. The best comparable, in the circumstances of this case, he submitted is comparable No. 8, which was part of the scheduled land, which was acquired some seven months earlier. There an award of RM48,000 was made by the District Land Administrator and accepted by the land owner. In support the learned counsel cited, among others, the case of *Nanyang Manufacturing Co. v. Collector of Land Revenue, Johor* [1954] 20 MLLJ 69 where it was held that the best guide to determine the fair market value is the evidence of sales of the same or similar land in the neighbourhood. And relying on *Bertam Consolidated Rubber Co. Ltd. v. Collector of Land Revenue Province Wellesley* [1984] 1 CLJ 69; [1984] 1 CLJ (Rep) 78 and *Collector of Land Revenue v. Alagappa Chettiar; Collector of Land Revenue v. Ong Thye Eng* (1875 - 1990) 2 PCC 665 he

further contended the scheduled land ought to be valued as a whole. He concluded by saying that in the circumstances of this case the best comparable is comparable No. 8 and based on the said comparable the fair market value of the scheduled land is in the region of RM48 to RM50 as claimed by the appellant. The learned senior federal counsel, who appeared for the respondent, argued that the learned judge had correctly relied on comparables No. 4 and No. 8, which are the common comparables, and had arrived at the award after making the necessary adjustments based on both size and location. In the circumstances he maintained that the appeal by the appellant is devoid of any merit.

The approach to be adopted by this court in an appeal under s. 49 of the Act is amply set out in the judgment of the Privy Council in *Collector of Land Revenue v. Alagappa Chettiar; Collector of Land Revenue v. Ong Thye Ens (supra)* where at p. 668 it states:

> The appeal to the Federal Court under section 49 of the Land Acquisition Act 1960 is like any other civil appeal, by way of re-hearing. The Federal Court is entitled to review the inference and conclusions of the High Court and to draw its own inferences and conclusions *Aik Ho & Co. Ltd v. Superintendent of Lands and Surveys* [1968] 2 PCC 493, [1969] AC 1. But where the inferences and conclusions of the High Court are based upon findings of primary fact which are dependent upon the credibility of the oral evidence of witnesses whom the trial judge alone has had the advantage of hearing and seeing an appellate court ought to accept the High Court's findings of primary fact save in very exceptional cases. Similarly where expert oral evidence of values has been called at the trial and discloses a conflict of opinion between them, the judge's finding as to which he regarded as most reliable is entitled to considerable weight though it is less sacrosanct then his findings of pure fact which are dependent upon his view of whether or not particular witness were telling the truth. Finally, their Lordships would observe that land valuation inevitably involves an element of appreciation and impression. There is room for divergence of opinion. As in the case of appeals against assessments of damages or against apportionment of blame in actions for negligence an appellate court ought not to reject the judge's assessment and to embark upon a fresh valuation of its own unless it is satisfied for good reason that the judge's assessment must be wrong.

In the present case the learned judge relied on comparables No. 4 and No. 8 and for reasons stated in his judgment he rejected the other comparables relied upon by the valuer for the appellant and the Government valuer. We agree with the reasons proffered by the learned judge in rejecting those comparables.

We will now consider comparables Nos. 4 and 8. Firstly, comparable No. 4. This is a transaction involving the sale of Bertam Estate by Bertam Consolidated Rubber Co. Ltd. to Bertam Properties Sdn. Bhd. The date of transaction was 20 December 1991 some nine months before the acquisition of the scheduled land. The declared transacted price was RM25,012 per acre which was increased to RM26,000 by the Pejabat Duti Setem. Even though this comparable is much bigger in size compared to the scheduled land, it should be noted that both are estate lands. As aptly observed by Mohamed Dzaiddin SCJ in *Siah Brothers Plantation Sdn. Bhd. v. Pentadbir Tanah dan Daerah Kuantan* [1993] 3 CLJ 435, for the purpose of determining the market value of estate land comparison ought to be made with other estate land. Therefore, subject to necessary adjustments we agree with the learned judge that the appellant's comparable No. 4 is a good comparable to be considered in determining the fair market value of the scheduled land.

The other comparable relied upon by the learned judge is comparable No. 8, which was part of the scheduled land acquired earlier by the Government. The total area acquired was only 18.4 acres. Since the scheduled land is unarguably much larger in size than this comparable, therefore, the Government valuer in his report had made a downward adjustment of 40% on account of size, this brings the adjusted value to RM71,167 per hectare or RM26,300 per acre for the scheduled land.

It is clear from the judgment of the learned judge that in arriving at his award he used both comparables as a basis and after making the necessary adjustments for size and location he came to his finding that the fair market value for scheduled land is RM35,000 per acre. In our view, the adjustments, in the circumstances, are reasonable, taking into account the difference in size of the two comparables compared to that of the scheduled land and also the location of the scheduled land. In this regard we think the learned judge had acted on correct principles. For support we only need to refer to *Bertam Consolidated Rubber Co. Ltd. v. Collector of Land Revenue Province Wellesley (supra)* where Mohamed Azmi FJ at p. 165 observed:

> In considering the three previous acquisition awards in respect of Bertam Estate, the learned Judge reminded himself of what was stated at page 205 of Aggrawalla, 3rd Edition, which says that evidence of previous acquisition awards which were accepted are relevant to show the market value, and that prices which are given by the Collector to people whose lands are acquired and who accepted them are valuable evidence in ascertaining the market value of the property. Although he rejected Mr. Loh's valuation, he held in favour of the appellants by enhancing the Collector's award from $12,600/- to $15,000/- per acre. In doing so he used KEMAS Centre acquisition on August 30, 1979

> as the cornerstone of his valuation. As set out above, KEMAS Centre was acquired at $20,000/- per acre from the appellants. The two acres for KEMAS Centre just as the 20 acres of subject land formed part of Bertam Estate. In our view, KEMAS Centre acquisition award which was offered and accepted by the appellants is relevant in determining the market value, but adjustments must be made as to size, time factor and other dissimilarities between the land previously acquired and the subject land.

In the above case His Lordship noted in particular, adjustments must be made as to size, time factor and other dissimilarities even though the comparable relied upon was part of the same estate as the acquired land. Learned counsel further critised the learned judge for not affording sufficient reasons as to how he arrived at his estimation of the fair market value. We would in this regard adopt the observation of the learned author of *Aggarwala's Compulsory Acquisiton of Land in India*, 7th edn. p. 553 which reads:

> A determination of value is 'an enquiry relating to a subject abounding in uncertainties, where, there is more than ordinary guess work and where it would be very unfair to require an exact exposition of reasons for the conclusions arrived at'. It had been observed that in all valuation, judicial or otherwise there must be room for inference and inclination of opinions, which being more or less conjectural are difficult to reduce to exact reasoning or to explain to other, and it is unfair to require an exact exposition of reasons for the conclusions arrived at, the question of fair compensation is not an algebraic problem which would be solved by an abstract formula.

To that we would add the words of the Lord Diplock in *Collector of Land Revenue v. Alagappa Chettiar; Collector of Land Revenue v. Ong Thye Eng (supra)* at p. 669 which reads: "... an appellate court ought not to reject the judge's assessment and to embark upon a fresh valuation of its own unless it is satisfied for good reason that the judge's assessment must be wrong."

The burden lies on the appellant to satisfy this court that the learned judge's assessment was wrong and this, the appellant failed to do. For the above reasons the appeal is dismissed with costs to the respondent. Deposit to account of taxed costs.